

option to purchase the Homestead Protection property, not to exceed 10 acres.

*Homestead Protection property.* This refers to the principal residence which secured a FLP loan.

*Indian Reservation.* Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

*Limited Resource Program.* A reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

*Liquidated.* The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

*Loan service program.* A Primary Loan Servicing program or a Preservation Loan Servicing program (Homestead Protection) for FLP loan borrowers.

*New application.* An application submitted on or after November 28, 1990, for loan servicing programs. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990.

*Nonessential assets.* Nonessential assets are those in which the borrower has an ownership interest, that:

(1) Do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation (see 1962.17 of subpart A of part 1962 of this chapter); and

(2) Are not exempt from judgment creditors or in a bankruptcy action. Each State Executive Director, with the guidance of the Office of the General Counsel, will issue a State Supple-

ment to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with statute.

*Nonprogram (NP) loan.* An NP loan results when a loan is made to an ineligible applicant or transferee in connection with a loan assumption and sale of inventory properties at ineligible terms. Borrowers originally determined eligible by the agency and found to be ineligible after the loan was made due to an agency error are not considered to have nonprogram loans.

*Preservation loan service program.* See Homestead Protection.

*Primary loan service program.* Primary loan service program means:

- (1) Loan consolidation, rescheduling, or reamortization;
- (2) Interest rate reduction, including use of the limited resource program;
- (3) Loan restructuring, including deferral, or writing down of the principal or accumulated interest; or
- (4) Any combination of the above.

*Reamortization.* Reamortization is rearranging the installment payments of a real estate loan, and may include changing the interest rate and terms of a loan made for Subtitle A purposes.

*Rescheduling.* Rescheduling is rewriting the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

*Writedown.* For purposes of this subpart, writedown is reducing a borrower's debt to an amount that will result in a feasible plan of operation.

[62 FR 10121, Mar. 5, 1997, as amended at 69 FR 5267, Feb. 4, 2004]

#### § 1951.907 Notice of Loan Service Programs.

In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the County Supervisor will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of first class mailing.

(a) *Notification of borrowers who file bankruptcy.* The account will be serviced in accordance with instructions from the Regional Office of the General Counsel (OGC), and in accordance with

§1962.47(a)(3) of subpart A of part 1962 of this chapter.

(b) *Notification of borrowers who have been discharged in bankruptcy or who have plans confirmed by bankruptcy courts.* If the borrower has been discharged in bankruptcy or the borrower is operating under a confirmed plan, the account will be serviced in accordance with instructions from the Regional OGC and in accordance with §1962.47 (a) or (c) of subpart A of part 1962 of this chapter.

(c) *Notification of borrowers 90 days past due on payments.* FLP borrowers who are at least 90 days past due (60 days delinquent) will be sent Exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with paragraph (d) of this section. In addition to the requirements set forth above, servicing officials will provide Attachments 1 and 2 of Exhibit A of this subpart to these borrowers, as set forth below:

(1) At the time an application is made for participation in an FLP loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FLP borrower, whether delinquent or not, prior to the sending of a packet under paragraph (c) of this section, and

(3) If a borrower has not previously received exhibit A and attachments 1 and 2 of this subpart, such exhibit and attachments will be provided before the earliest of:

- (i) Initiating any liquidation action,
- (ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,
- (iii) Accelerating payments on the loan,
- (iv) Repossessing the borrower's property,
- (v) Foreclosing on property, or
- (vi) Taking any other collection action.

(d) *Notification of borrowers in non-monetary default; delinquent borrowers also in non monetary default, or when a junior or senior lienholder is foreclosing.* FLP borrowers who are in non-mone-

tary default will be sent attachments 1, 3, and 4 of exhibit A of this subpart by certified mail, return receipt requested. If a case is in the hands of the Department of Justice or in litigation, no loan servicing action will be taken without Department of Justice or OGC concurrence (see 1962.49 of this chapter). Any servicing request will be processed as indicated in §1951.909. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final appeal decision that does not result in a resolution of the loan defaults, the account will be accelerated.

(e) The Agency will notify delinquent NP borrowers who have only SA amortization agreements within 15 days of the missed payment of their rights with regard to the debt. All items in paragraph (f)(5) of this section, with the exception of Attachments 2 or 4 of exhibit A and information for conservation contracts or debt settlement, must be submitted within 60 days of such notice for the borrower to be considered for reamortization.

(f) *Request for primary and preservation loan service programs.* (1) To request consideration for Primary and Preservation Loan Service programs, borrowers who are sent exhibit A, with attachments 1 and 2 or attachments 1, 3, and 4 must complete and return attachment 2 or attachment 4, as appropriate, to the local county office within 60 days after receiving those documents, with the forms required by this paragraph for a completed application.

(2) If borrowers are sent attachments 3 and 4 and do not request servicing within 60 days, the agency will proceed with liquidation in accordance with §1955.15 of this chapter.

(3) If borrowers are sent exhibit A and attachments 1 and 2 of this subpart and do not submit a completed application within the 60-day time period, the servicing official will send attachments 9 and 10, or 9-A and 10-A of exhibit A of this subpart, as applicable. These attachments will not be sent to borrowers who are being serviced in accordance with §1951.908. For borrowers receiving attachments 9 and 10 or 9-A and 10-A, the agency will proceed with liquidation in accordance with §1955.15 of this chapter.

(4) If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the county office. The servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The borrower's response date for a completed application will begin on the date of receipt of the certified mail or 3 days following the date of first class mailing, whichever is earlier.

(5) An application for loan service programs must include the following forms (available in any agency office), and data, unless the information is already in the borrower's case file and still current, as determined by the approval official:

(i) Attachment 2 or 4 of exhibit A to this subpart, response form to apply for loan servicing.

(ii) Form 410–1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FLP debt.

(iii) Form 431–2, "Farm and Home Plan," or any other form or submission acceptable to the agency that sets forth a plan of operation and the necessary information. Commodity prices supplied by the agency will be used to complete the forms.

(iv) Form 440–32, "Request for Statement of Debts and Collateral."

(v) Form RD 1910–5, "Request for Verification of Employment."

(vi) Form AD–1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," if the one on file with the agency does not reflect all the land owned and leased by the borrower.

(vii) Form SCS CPA–26, "Highly Erodible Land and Wetland Determination," if not previously on file with the agency for the farm operation. This form is included as part of the application after being completed by NRCS. (This form is available at NRCS local offices.)

(viii) If the applicant wants to be considered for a conservation contract, a map or copy of an aerial photo of the farm, on which the applicant must show that portion of the farm and ap-

proximate acres to be considered in a request for debt restructuring provided for in the conservation contract program.

(ix) The most recent five years' income tax returns and supporting documents, unless the borrower has been farming for less than five years. In such case, income tax returns and supporting documents for the tax years that the borrower farmed.

(x) If the borrower is applying for debt settlement, Form RD1956–1, "Application for Settlement of Indebtedness."

(6) The borrower will be provided with copies of these forms when Exhibit A is sent, and may request copies of regulations and the forms manual inserts (FMI) in writing within 30 days of receipt of the loan servicing notice. If these latter items are not provided within 10 days of such a request, the borrower's time for submission of a complete application will be increased by the period of delay in excess of 10 days caused by the Agency.

(7) Not more than one 60-day period will be provided to a borrower to respond to the notice of loan service programs except in accordance with § 1951.908. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

[57 FR 18626, Apr. 30, 1992, as amended at 62 FR 10123, Mar. 5, 1997; 69 FR 5263, Feb. 4, 2004]

EDITORIAL NOTE: At 69 FR 5267, Feb. 4, 2004, § 1951.907(c) was amended; however, due to unclear amendatory instruction, the amendment could not be incorporated.

**§ 1951.908 Servicing financially distressed current borrowers.**

A borrower who is financially distressed, but is not yet delinquent on FLP payments, may request servicing at any time.

(a) *Notification.* If a current plan of operation demonstrates that the borrower is or will be financially distressed, as defined in § 1951.906, or if the borrower otherwise requests servicing, the servicing official will provide attachments 1 and 2 of exhibit A of this subpart.

(b) *Eligibility.* To be considered for servicing in accordance with this section, the borrower must submit to the